In the High Court of Punjab & Haryana at Chandigarh

RSA No. 1425 of 2003

Date of Order : 17/09/2007

Santosh Devi And Ors. VS. State Of Hayrana

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Mr.Narender Hooda, Advocate for the appellant.

Mr.Sanjay Kaushal, Advocate for respondent Nos.2 & 3.

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J U D G M E N T

HEMANT GUPTA, J.

This order shall dispose of R.S.A.No.1416 of 2003 filed by the defendant and R.S.A.No.1425 of 2003 filed by the plaintiffs against the judgment and decree passed by the learned First Appellate Court whereby though the plaintiffs were found to be owner of the suit property and thus entitled to possession of the suit property, but a decree for compensation equal to market value of the suit land was passed in favour of the plaintiffs.

It is the case of the plaintiffs that they are the owner of 1/4th share of the land measuring 110 kanals 17 marlas, whereas defendant Nos.3 to 21 are the co-owners in the remaining land who have been impleaded as proforma defendants. It was alleged that the agricultural land comprised in Khasra Nos.10/7, 14 & 15, Rect. No.11, Khasra Nos.11, 12, 19/2 is situated adjacent to the farm of the Haryana Cooperative Sugar Mills Limited, Rohtak i.e. Defendant No.2. The said defendant have taken forcible

possession of the land measuring 1 kanal 19 marlas out of the aforementioned land, in July, 1990. Since the possession of the defendants is unauthorized without any title, the plaintiffs claimed the possession for the said land.

In the written statement, the defendants have taken up a stand that no legal right of the plaintiff has been infringed and the plaintiffs have no locus standi to file the present suit as the plaintiffs should have filed an appeal before the Chairman of the Sugar Mill.

The learned trial Court decreed the suit holding that the plaintiff alongwith defendant Nos.3 to 21 are entitled to possession of the suit land measuring 1 kanals 19 marlas and defendant Nos.1 & 2 were directed to deliver the possession of the land to the plaintiffs. Such finding was recorded on the basis of report of the Local Commissioner, Exhibit P-1, wherein it was found that the land measuring 1 kanal 19 marlas has been encroached upon by the defendants. PW-2 Har Bhagwan, retired Girdawar was the Local Commissioner which has proved his report Exhibit P-1. PW-3 Prem Singh Patwari has deposed that the land described in the jamabandi, Exhibit P-3 is not owned by the Sugar Mill.

The contention of the defendant No.1 & 2 that the report of the Local Commissioner was not admissible was found to be untenable as the said Local Commissioner has demarcated the land after giving notice to defendant No.2 thrice, but none has appeared on behalf of said defendant. It has been also found that the report Exhibit D-2, prepared by Rishi Parkash, Naib Tehsildar DW-1, is not reliable as he has given his report without giving any notice to the plaintiffs. It has been further found that the stand of the defendants that they have acquired the land in the year 1955 could not

be substantiated as no document could be produced in respect of acquisition of the land. Thus, the firm finding was recorded that the defendants have encroached upon the land measuring 1 kanal 19 marlas.

In appeal, the learned First Appellate Court affirmed the finding regarding ownership of the plaintiff and encroachment by defendant Nos.1 & 2. But, since it was found that the defendants are in possession of the suit property since the year 1955, therefore, it will be highly inappropriate to disturb the possession after such a long time and consequently, passed a decree for compensation to the plaintiff.

At the time of motion hearing of the appeal before this Court on 24.10.2006, learned counsel for defendant Nos.1 & 2 made a statement that defendant Nos.1 & 2 require some time to make alternative arrangement for shifting the Sugar Mill as process of the land acquisition for Sugar Mill has been initiated.

To day, Mr.Kaushal, learned counsel for defendant Nos.1 & 2 states that the land of the Sugar Mill has been taken over by the Haryana Urban Development Authority and the Sugar Mill has been shifted to some other location.

In view of the said subsequent development, the finding recorded by the learned First Appellate Court that the plaintiffs are entitled to compensation is required to be modified. The fact that the plaintiffs are owner of the land in dispute i.e. the land measuring 1 kanal 19 marlas and that the same was encroached upon by the Sugar Mill is in dispute. It is also not in dispute that the Sugar Mill has vacated the entire land which is inclusive of the land encroached upon by the said defendants. Therefore, the judgment and decree passed by the learned trial Court is modified. The

decree regarding payment of compensation to the plaintiff is set-aside. The plaintiff shall be entitled to actual possession of the land measuring 1 kanal 19 marlas i.e. the land encroachment upon by defendant Nos.1 & 2.

In view of the above modification, the present appeals stand disposed of.

17-09-2007 **(HEMANT GUPTA)**
mohinder* **JUDGE